

By: Hilderbran

H.B. No. 253

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the protection of children by enforcing compulsory
3 public school attendance requirements, ensuring reports of abuse or
4 neglect, protecting children from abuse and neglect, ensuring that
5 births are reported, and prosecuting the offense of bigamy;
6 providing criminal penalties.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

8 SECTION 1. Article 12.01, Code of Criminal Procedure, is
9 amended to read as follows:

10 Art. 12.01. FELONIES. Except as provided in Article 12.03,
11 felony indictments may be presented within these limits, and not
12 afterward:

13 (1) no limitation:

14 (A) murder and manslaughter;

15 (B) sexual assault under Section 22.011(a)(2),
16 Penal Code, or aggravated sexual assault under Section
17 22.021(a)(1)(B), Penal Code;

18 (C) sexual assault, if during the investigation
19 of the offense biological matter is collected and subjected to
20 forensic DNA testing and the testing results show that the matter
21 does not match the victim or any other person whose identity is
22 readily ascertained;

23 (D) continuous sexual abuse of young child or
24 children under Section 21.02, Penal Code;

1 (E) indecency with a child under Section 21.11,
2 Penal Code; or

3 (F) an offense involving leaving the scene of an
4 accident under Section 550.021, Transportation Code, if the
5 accident resulted in the death of a person;

6 (2) ten years from the date of the commission of the
7 offense:

8 (A) theft of any estate, real, personal or mixed,
9 by an executor, administrator, guardian or trustee, with intent to
10 defraud any creditor, heir, legatee, ward, distributee,
11 beneficiary or settlor of a trust interested in such estate;

12 (B) theft by a public servant of government
13 property over which he exercises control in his official capacity;

14 (C) forgery or the uttering, using or passing of
15 forged instruments;

16 (D) injury to an elderly or disabled individual
17 punishable as a felony of the first degree under Section 22.04,
18 Penal Code;

19 (E) sexual assault, except as provided by
20 Subdivision (1); or

21 (F) arson;

22 (3) seven years from the date of the commission of the
23 offense:

24 (A) misapplication of fiduciary property or
25 property of a financial institution;

26 (B) securing execution of document by deception;

27 (C) a felony violation under Chapter 162, Tax

1 Code;

2 (D) false statement to obtain property or credit
3 under Section 32.32, Penal Code;

4 (E) money laundering;

5 (F) credit card or debit card abuse under Section
6 32.31, Penal Code; ~~or~~]

7 (G) fraudulent use or possession of identifying
8 information under Section 32.51, Penal Code; or

9 (H) bigamy under Section 25.01, Penal Code,
10 except as provided by Subdivision (6);

11 (4) five years from the date of the commission of the
12 offense:

13 (A) theft or robbery;

14 (B) except as provided by Subdivision (5),
15 kidnapping or burglary;

16 (C) injury to an elderly or disabled individual
17 that is not punishable as a felony of the first degree under Section
18 22.04, Penal Code;

19 (D) abandoning or endangering a child; or

20 (E) insurance fraud;

21 (5) if the investigation of the offense shows that the
22 victim is younger than 17 years of age at the time the offense is
23 committed, 20 years from the 18th birthday of the victim of one of
24 the following offenses:

25 (A) sexual performance by a child under Section
26 43.25, Penal Code;

27 (B) aggravated kidnapping under Section

1 20.04(a)(4), Penal Code, if the defendant committed the offense
2 with the intent to violate or abuse the victim sexually; or

3 (C) burglary under Section 30.02, Penal Code, if
4 the offense is punishable under Subsection (d) of that section and
5 the defendant committed the offense with the intent to commit an
6 offense described by Subdivision (1)(B) or (D) of this article or
7 Paragraph (B) of this subdivision;

8 (6) ten years from the 18th birthday of the victim of
9 the offense:

10 (A) injury to a child under Section 22.04, Penal
11 Code; or

12 (B) bigamy under Section 25.01, Penal Code, if
13 the investigation of the offense shows that the person, other than
14 the legal spouse of the defendant, whom the defendant marries or
15 purports to marry or with whom the defendant lives under the
16 appearance of being married is younger than 18 years of age at the
17 time the offense is committed; or

18 (7) three years from the date of the commission of the
19 offense: all other felonies.

20 SECTION 2. Sections 25.091(a) and (b), Education Code, are
21 amended to read as follows:

22 (a) A peace officer serving as an attendance officer has the
23 following powers and duties concerning enforcement of compulsory
24 school attendance requirements:

25 (1) to investigate each case of a violation of
26 compulsory school attendance requirements referred to the peace
27 officer;

1 (2) to enforce compulsory school attendance
2 requirements by:

3 (A) referring a student to a juvenile court or
4 filing a complaint against a student in a county, justice, or
5 municipal court if the student has unexcused absences for the
6 amount of time specified under Section 25.094 or under Section
7 51.03(b)(2), Family Code; and

8 (B) filing a complaint in a county, justice, or
9 municipal court against a parent who violates Section 25.093;

10 (3) to serve court-ordered legal process;

11 (4) to review school attendance records for compliance
12 by each student investigated by the officer;

13 (5) to maintain an investigative record on each
14 compulsory school attendance requirement violation and related
15 court action and, at the request of a court, the board of trustees
16 of a school district, or the commissioner, to provide a record to
17 the individual or entity requesting the record;

18 (6) to make a home visit or otherwise contact the
19 parent of a student who is in violation of compulsory school
20 attendance requirements, except that a peace officer may not enter
21 a residence without the permission of the parent of a student
22 required under this subchapter to attend school or of the tenant or
23 owner of the residence except to lawfully serve court-ordered legal
24 process on the parent; ~~and~~

25 (7) to make a home visit or otherwise contact the
26 parent of a student who is the subject of an ongoing investigation
27 under Chapter 261, Family Code, and who is in violation of

1 compulsory school attendance requirements, except that a peace
2 officer may not enter a residence without the effective consent of
3 the student required under this subchapter to attend school or the
4 permission of the parent of the student or of the owner or tenant of
5 the residence except to lawfully serve court-ordered legal process
6 on the parent or to execute a search warrant; and

7 (8) to take a student into custody with the permission
8 of the student's parent or in obedience to a court-ordered legal
9 process.

10 (b) An attendance officer employed by a school district who
11 is not commissioned as a peace officer has the following powers and
12 duties with respect to enforcement of compulsory school attendance
13 requirements:

14 (1) to investigate each case of a violation of the
15 compulsory school attendance requirements referred to the
16 attendance officer;

17 (2) to enforce compulsory school attendance
18 requirements by:

19 (A) referring a student to a juvenile court or
20 filing a complaint against a student in a county, justice, or
21 municipal court if the student has unexcused absences for the
22 amount of time specified under Section 25.094 or under Section
23 51.03(b)(2), Family Code; and

24 (B) filing a complaint in a county, justice, or
25 municipal court against a parent who violates Section 25.093;

26 (3) to monitor school attendance compliance by each
27 student investigated by the officer;

1 (4) to maintain an investigative record on each
2 compulsory school attendance requirement violation and related
3 court action and, at the request of a court, the board of trustees
4 of a school district, or the commissioner, to provide a record to
5 the individual or entity requesting the record;

6 (5) to make a home visit or otherwise contact the
7 parent of a student who is in violation of compulsory school
8 attendance requirements, except that the attendance officer may not
9 enter a residence without permission of the parent or of the owner
10 or tenant of the residence;

11 (6) to make a home visit or otherwise contact the
12 parent of a student who is the subject of an ongoing investigation
13 under Chapter 261, Family Code, and who is in violation of
14 compulsory school attendance requirements, except that an
15 attendance officer may not enter a residence without the effective
16 consent of the student required under this subchapter to attend
17 school or the permission of the parent of the student or of the
18 owner or tenant of the residence except to accompany a peace officer
19 who is executing a search warrant;

20 (7) at the request of a parent, to escort a student
21 from any location to a school campus to ensure the student's
22 compliance with compulsory school attendance requirements; and

23 (8) [~~(7)~~] if the attendance officer has or is informed
24 of a court-ordered legal process directing that a student be taken
25 into custody and the school district employing the officer does not
26 employ its own police department, to contact the sheriff,
27 constable, or any peace officer to request that the student be taken

1 into custody and processed according to the legal process.

2 SECTION 3. Section 25.091(c), Education Code, is amended by
3 adding Subdivision (3) to read as follows:

4 (3) "Effective consent" does not include consent given
5 by a person who by reason of youth is known by the person to whom
6 consent is given to be unable to make a reasonable decision.

7 SECTION 4. Section 25.093, Education Code, is amended by
8 amending Subsections (a), (c), and (g) and adding Subsection (c-1)
9 to read as follows:

10 (a) If a warning notice is issued as required by Section
11 25.095(b) [~~25.095(a)~~], the parent with criminal negligence fails to
12 require the child to attend school as required by law, and the child
13 has absences for the amount of time specified under Section 25.094,
14 the parent commits an offense.

15 (c) Except as provided by Subsection (c-1), an [~~A~~] offense
16 under Subsection (a) is a Class A [~~C~~] misdemeanor. Each day the
17 child remains out of school may constitute a separate offense. Two
18 or more offenses under Subsection (a) may be consolidated and
19 prosecuted in a single action. If the court orders deferred
20 disposition under Article 45.051, Code of Criminal Procedure, the
21 court may require the defendant to provide personal services to a
22 charitable or educational institution as a condition of the
23 deferral.

24 (c-1) If a parent has been previously convicted of an
25 offense under Subsection (a), a subsequent offense under that
26 subsection is a felony of the third degree.

27 (g) If a parent refuses to obey a court order entered under

1 this section, the court may punish the parent for contempt of court
2 under Section 21.002, Government Code. Notwithstanding Section
3 21.002(b) or (c), Government Code, the punishment for contempt of
4 court for a parent who refuses to obey a court order entered under
5 this section is a fine of not more than \$1,000, confinement in the
6 county jail for not more than six months, or both a fine and
7 confinement in jail.

8 SECTION 5. Section 25.094(e), Education Code, is amended to
9 read as follows:

10 (e) An offense under this section is a Class B [~~C~~]
11 misdemeanor.

12 SECTION 6. Section 261.109(b), Family Code, is amended to
13 read as follows:

14 (b) An offense under this section is a Class A misdemeanor,
15 except that the offense is a state jail felony if it is shown on the
16 trial of the offense that:

17 (1) the person committing the offense is a
18 professional as defined by Section 261.101(b); or

19 (2) the child was a person with mental retardation who
20 resided in a state supported living center, the ICF-MR component of
21 the Rio Grande State Center, or a facility licensed under Chapter
22 252, Health and Safety Code, and the actor knew that the child had
23 suffered serious bodily injury as a result of the abuse or neglect.

24 SECTION 7. Section 262.001, Family Code, is amended by
25 amending Subsection (b) and adding Subsection (c) to read as
26 follows:

27 (b) In determining the reasonable efforts, if any, that are

1 required to be made with respect to preventing or eliminating the
2 need to remove a child from the child's home or to make it possible
3 to return a child to the child's home, the child's health and safety
4 is the paramount concern.

5 (c) In making a determination under Subsection (b), the
6 court may find that based on the circumstances no reasonable
7 efforts would prevent or eliminate the need to remove a child and
8 that the department satisfied the requirements of Subsection (b)
9 even though the department made no efforts to prevent or eliminate
10 the need to remove a child.

11 SECTION 8. Section 262.1015(b), Family Code, is amended to
12 read as follows:

13 (b) A court may issue a temporary restraining order in a
14 suit by the department for the removal of an alleged perpetrator
15 under Subsection (a) if the department's petition states facts
16 sufficient to satisfy the court that:

17 (1) there is an immediate danger to the physical
18 health or safety of the child or the child has been a victim of
19 sexual abuse;

20 (2) there is no time, consistent with the physical
21 health or safety of the child, for an adversary hearing;

22 (3) the child is not in danger of abuse from a parent
23 or other adult with whom the child will continue to reside in the
24 residence of the child; ~~and~~

25 (4) the parent or other adult with whom the child will
26 continue to reside in the child's home is likely to:

27 (A) make a reasonable effort to monitor the

1 residence; and

2 (B) report to the department and the appropriate
3 law enforcement agency any attempt by the alleged perpetrator to
4 return to the residence; and

5 (5) the issuance of the order is in the best interest
6 of the child.

7 SECTION 9. Section 262.102(b), Family Code, is amended to
8 read as follows:

9 (b) In determining whether the circumstances described by
10 Subsections (a)(1) and (2) exist [~~there is an immediate danger to~~
11 ~~the physical health or safety of a child~~], the court shall [~~may~~]
12 consider whether the child's household includes a person who has:

13 (1) abused or neglected another child in a manner that
14 caused serious injury to or the death of the other child; or

15 (2) sexually abused another child.

16 SECTION 10. Subchapter B, Chapter 262, Family Code, is
17 amended by adding Section 262.116 to read as follows:

18 Sec. 262.116. PROHIBITION ON ACCOMPANYING CHILD. If the
19 department takes possession of a child under this chapter by
20 removing the child from an adult entitled to possession of the
21 child, the department may not allow that adult to accompany or
22 remain with the child after the child is in the department's
23 custody.

24 SECTION 11. Section 195.004, Health and Safety Code, is
25 amended by amending Subsection (d) and adding Subsection (d-1) to
26 read as follows:

27 (d) Except as provided by Subsection (d-1), an [~~An~~] offense

1 under this section is a Class C misdemeanor.

2 (d-1) An offense under this section for failure to perform a
3 duty required by Section 192.003 is a Class A misdemeanor.

4 SECTION 12. Section 25.01, Penal Code, is amended by
5 amending Subsection (e) and adding Subsection (f) to read as
6 follows:

7 (e) Except as provided by Subsection (f), an [An] offense
8 under this section is a felony of the third degree~~[, except that if~~
9 ~~at the time of the commission of the offense, the person whom the~~
10 ~~actor marries or purports to marry or with whom the actor lives~~
11 ~~under the appearance of being married is:~~

12 ~~[(1) 16 years of age or older, the offense is a felony~~
13 ~~of the second degree; or~~

14 ~~[(2) younger than 16 years of age, the offense is a~~
15 ~~felony of the first degree].~~

16 (f) If it is shown at the trial of the offense that at the
17 time of the commission of the offense the person whom the actor
18 marries or purports to marry or with whom the actor lives under the
19 appearance of being married is 17 years of age or younger, the
20 offense is:

21 (1) a felony of the second degree if the actor is 17
22 years of age or younger; or

23 (2) a felony of the first degree if the actor is 18
24 years of age or older.

25 SECTION 13. Section 25.091, Education Code, as amended by
26 this Act, applies beginning with the 2010-2011 school year.

27 SECTION 14. The changes in law made by this Act to Sections

1 25.093 and 25.094, Education Code, Section 261.109, Family Code,
2 Section 195.004, Health and Safety Code, and Section 25.01, Penal
3 Code, apply only to an offense committed on or after the effective
4 date of this Act. An offense committed before the effective date of
5 this Act is governed by the law in effect when the offense was
6 committed, and the former law is continued in effect for that
7 purpose. For purposes of this section, an offense is committed
8 before the effective date of this Act if any element of the offense
9 occurs before that date.

10 SECTION 15. The change in law made by this Act to Article
11 12.01, Code of Criminal Procedure, does not apply to an offense if
12 the prosecution of that offense becomes barred by limitation before
13 the effective date of this Act. The prosecution of that offense
14 remains barred as if this Act had not taken effect.

15 SECTION 16. The change in law made by this Act to Section
16 262.1015(b), Family Code, applies only to a petition for a
17 temporary restraining order in a suit by the Department of Family
18 and Protective Services filed on or after the effective date of this
19 Act. A petition filed before the effective date of this Act is
20 governed by the law in effect on the date the petition was filed,
21 and the former law is continued in effect for that purpose.

22 SECTION 17. This Act takes effect September 1, 2011.